

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TOM PARKWELL,

Plaintiff,

v.

JAMES HOWARD and MICHAEL T.  
PINES, et al.,

Defendants.

CASE NO. C21-5233 BHS

ORDER REMANDING CASE

This matter comes before the Court on Defendant Michael T. Pines's motion for temporary restraining order, Dkt. 8, and on its own motion following review of Pines's notice of removal of this unlawful detainer action from the Clallam County Superior Court for the State of Washington, Dkt. 1.

Plaintiff Tom Parkwell alleges that he is the landlord of 300 N. Sequim Avenue, #24, Sequim, Washington 98382 ("the property"), where Defendants, including Pines, reside. Dkt. 1-1. He alleges that he served notice of intent to sell and notice to vacate on Defendants in compliance with Governor Jay Inslee's Proclamation 20-19.6 on Evictions

1 and Related Housing Practices, but Defendants refused to vacate. *Id.* Parkwell sued for a  
2 writ of restitution and damages pursuant to RCW 59.18, *et seq.*

3 Pines removed the case to this Court, alleging federal question jurisdiction. Dkt. 1  
4 at 3. In the notice of removal, Pines improperly styles himself as the plaintiff and styles  
5 Parkwell, along with numerous other individuals, as defendants. *Id.* at 1. He contends that  
6 these individuals “committed crimes consisting of real estate fraud, tax fraud, bank fraud,  
7 perjury, and other crimes.” *Id.* at 3. He attaches an exhibit titled “Complaint” further  
8 articulating his allegations, Dkt. 1-3, which the Court construes as intending to assert  
9 counterclaims.

10 Pines asserts that the Clallam County Public Utility District turned off the  
11 electricity at the property where he resides. Dkt. 8 He moves for a temporary restraining  
12 order and preliminary injunction requiring the Utility District to restore the property’s  
13 electricity service. Dkt. 8.

14 If at any time before final judgment it appears that the district court lacks subject  
15 matter jurisdiction, the case shall be remanded. 28 U.S.C. § 1447(c). District courts have  
16 federal question jurisdiction over all claims “arising under the Constitution, laws, or  
17 treaties of the United States.” 28 U.S.C. § 1331. “The presence or absence of federal  
18 question jurisdiction is governed by the ‘well-pleaded complaint’ rule, which provides  
19 that federal question jurisdiction exists only when a federal question is presented on the  
20 face of the plaintiff’s properly pleaded complaint.” *California v. United States*, 215 F.3d  
21 1005, 1014 (9th Cir. 2000). In determining the existence of removal jurisdiction based  
22 upon a federal question, the court must look to the complaint as of the time the removal

1 petition was filed. *O'Halloran v. Univ. of Wash.*, 856 F.2d 1375, 1379 (9th Cir. 1988)  
2 (citations omitted).

3 A defense (or counterclaim) is not part of a plaintiff's properly pleaded statement  
4 of claim. *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 475 (1998). Accordingly, "a  
5 case may not be removed to federal court on the basis of a federal defense." *Franchise*  
6 *Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 14 (1983).

7 No federal question is present on the face of Parkwell's properly pleaded  
8 complaint. *California*, 215 F.3d at 1014. Pines's contention that he has federal  
9 counterclaims is insufficient to confer jurisdiction on this Court. As the Court is without  
10 jurisdiction to hear this case, it cannot consider Pines's motion for temporary restraining  
11 order.

12 Therefore, the Court will *sua sponte* **REMAND** this case to the Clallam County  
13 Superior Court, and Pines's motion for Temporary Restraining Order, Dkt. 8, is **DENIED**  
14 **as moot**, as are any other pending motions.

15 Dated this 7th day of April, 2021.

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18 BENJAMIN H. SETTLE  
19 United States District Judge  
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